

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: LATEX GLOVES PRODUCTS : MDL DOCKET NO. 1148  
LIABILITY LITIGATION :  
: ALL CASES

**CASE MANAGEMENT ORDER NO. 17**  
**ADOPTION OF BRIGHT-LINE TEST AND PROCEDURES**

With the assistance of Plaintiffs' Lead Counsel and Defendants' Liaison Counsel-Spokesperson, the Court has determined to adopt a so-called "bright-line" test to be used to cause the dismissal of appropriate defendants from specific counts in complaints in specific actions or from specific actions entirely at the termination of product identification discovery in those actions. The objective has been to develop a test that will be relatively easy to apply in good faith by plaintiffs' and defendants' counsel. Since this process will not preclude a Rule 56 motion on these issues at the conclusion of merits discovery, only clear-cut situations should result in dismissal of particular defendants at this time. To the extent that counsel cannot agree in individual situations, however, a simple dispute resolution procedure is provided.

**BRIGHT-LINE TEST**

Accordingly, the Court hereby adopts the following bright-line test:

Upon completion of pre-trial discovery relevant to product identification issues, the parties shall confer in good faith to decide whether, based on the evidence: (a) a particular defendant's latex gloves were supplied to any institution at a time when plaintiff was present at such institution; and (b) if so

supplied, a particular defendant's latex gloves were used either by plaintiff or by others at such institution in a manner in which such exposure reasonably could cause harm. If such evidence does not exist for (a) and (b) above, the plaintiff will agree to the voluntary dismissal of said defendant subject to the following condition: if for a period of one year following dismissal or ninety (90) days after the completion of merits discovery, whichever occurs later, evidence of such use or exposure to defendant's latex gloves which reasonably could have caused harm to plaintiff is developed and which was not reasonably known by or disclosed previously to plaintiff, the dismissed defendant will agree voluntarily to return to the record by stipulation without asserting the statute of limitations as a defense assuming that the initial filing was timely.

To the extent a plaintiff has alleged claims which impose liability irrespective of a plaintiff's ability to prove actual use of or exposure to a particular defendant's product, and where the applicable substantive law recognizes the legal sufficiency of such claims, the defendant shall not be entitled to dismissal from those claims.

## **PROCEDURE FOR APPLICATION AND RESOLUTION OF THE BRIGHT-LINE TEST**

The Court hereby adopts the following procedure for application and resolution of the bright-line test in individual actions part of MDL No. 1148:

1. Promptly after completion of pretrial discovery relevant to product identification issues in an individual action, plaintiff's counsel and counsel for any defendant believing it should be dismissed from the action entirely or from any counts of the complaint by application of the bright-line test shall meet and confer on that issue.
2. If counsel agree on a dismissal of defendant, an appropriate consent order shall be prepared and submitted to the Court. If counsel agree that no dismissal is appropriate, no further action shall be required. If the parties do not agree, either party may submit the dispute to the Special Master no later than 14 days after the close of discovery relevant to product identification issues.
3. The Special Master shall promptly conduct a hearing on the dispute and shall deliver an advisory opinion to the parties no later than 7 days after the hearing.
4. Promptly after receipt of the advisory opinion, plaintiff's and defendant's counsel shall meet and confer on the issue.
5. If counsel agree on a dismissal of defendant, an appropriate consent order shall be prepared and submitted to the Court. If counsel agree that no dismissal is

appropriate, no further action shall be required. If the parties do not agree, either party may submit the dispute to the Court in accordance with a procedure set by the Court.

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Edmund V. Ludwig, S.J.